IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No.

ALGIE ROE ROBERSON, EVERETTE LEE HOLLINS,
CHARLES RICHARD GRIFFITH,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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Algie Roe Roberson, Everette Lee Hollins, and Charles Richard Griffith pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above case on July 20, 1960.

OPINION BELOW.

The District Court did not render a written opinion. The memorandum opinion of the Court of Appeals for the Sixth Circuit is annexed hereto as an appendix on page A1.

JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on July 20, 1960 (pp. A11, A12 *infra*). The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254(1).

QUESTIONS PRESENTED.

(1) Was it error for the District Court to deny the motion of defense counsel, made at the beginning of the trial, that copies of all written statements and verbal summaries made by witnesses who were to testify for the government be furnished defense counsel so they might be used effectively in cross-examination?

(2) Was it error for the District Court to permit government counsel to comment, in the presence of the jury, and for the District Court itself to comment, that a government witness' statement was being turned over to defense counsel?

(3) Was it error for the District Court to permit government witnesses, when testifying, to read their testimony from written and prepared statements?

(4) Was it error for the District Court, itself, and for government counsel to require the defendants to stand up when their names were mentioned by a witness in order to

be identified by the testifying witness; and was it error for government counsel to call upon petitioner Hollins to state his name for identification purposes?

(5) Was it error for the District Court to permit government witnesses to testify about matters obtained through illegal and unconstitutional searches of vehicles?

(6) Was it error for the District Court to permit government witness John L. West to testify in the case when the rule had been demanded, and he had been present in the courtroom throughout all the previous government testimony?

(7) Did the District Court err in permitting testimony by government witnesses concerning statements made by defendant Smith after his arrest?

(8) Was it error for the District Court to permit the introduction of a book taken from the person of defendant Smith when he was arrested; and in permitting the introduction from said book of the statement: "Ga Boy 5-3004"?

(9) Was it error for the District Court to permit witnesses to testify that when defendant Nichols was arrested he made the statement that he had been delivering whiskey from 1022 Pine Street for about three months for 50¢ a gallon?

(10) Was it error for the District Court to refuse a motion for mistrial when it was brought to the attention of the jury by government counsel, in questioning the witness A. R. Roberson, Jr., that petitioner Roberson had been convicted previously?

CONSTITUTIONAL PROVISIONS INVOLVED.

The Fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendement to the Constitution of the United States provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Sixth Amendment to the Constitution of the United States provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in

his favor, and to have the assistance of counsel for his defense."

STATEMENT.

Petitioners were jointly indicted at the March 1959 term of the Grand Jury meeting in the Northeastern Division of the Eastern District of Tennessee at Greeneville, Tennessee, in a one-count indictment charging a violation of 18 U. S. C., Section 371, in that they allegedly conspired to violate Sections 5008(b), 5174, 5216, 5606, 5632, 5642, 5681, 5686, 5691, and 7206(4), Internal Revenue Code. (R. 7a-15a). All of the sections of the Internal Revenue Code allegedly violated pertain to distilled spirits upon which the tax was not paid and to the distilling of spirits without complying with the provisions of the Internal Revenue Code.

After the indictment was returned, the case was transferred to the Southern Division of the Eastern District of Tennessee, at Chattanooga.

Petitioner Roberson received a five-year sentence; petitioner Hollins received a three-year sentence; and petitioner Griffith received a three-year sentence. None of petitioners was given a preliminary hearing before indictment.

SPECIFICATIONS OF ERRORS TO BE URGED.

The Court of Appeals for the Sixth Circuit erred in holding:

(1) It was not error for the District Court to deny the motion of defense counsel, made at the beginning of the trial, that copies of all written statements and verbal

summaries made by witnesses who were to testify for the government be furnished defense counsel so they might be used effectively in cross-examination;

(2) It was not error for the District Court to permit government counsel to comment, in the presence of the jury, and for the District Court itself to comment that a government witness' statement was being turned over to defense counsel;

(3) It was not error for the District Court to permit government witnesses, when testifying, to read their testimony from written and prepared statements;

(4) It was not error for the District Court, itself, and for government counsel to require the defendants to stand up when their names were mentioned by a witness in order to be identified by the testifying witness; and it was not error for government counsel to call upon petitioner Hollins to state his name for identification purposes;

(5) It was not error for the District Court to permit government witnesses to testify about matters obtained through illegal and unconstitutional searches of vehicles;

(6) It was not error for the District Court to permit government witness John L. West to testify in the case when the rule had been demanded, and he had been present in the courtroom throughout all the previous government testimony;

(7) It was not error for the District Court to permit testimony by government witnesses concerning statements made by defendant Smith after his arrest;

(8) It was not error for the District Court to permit the introduction of a book taken from the person of defendant Smith when he was arrested; and in permitting the introduction from said book of the statement: "Ga Boy 5-3004";

(9) It was not error for the District Court to permit witnesses to testify that when defendant Nichols was arrested he made the statement that he had been delivering whiskey from 1022 Pine Street for about three months for 50¢ a gallon;

(10) It was not error for the District Court to refuse a motion for mistrial when it was brought to the attention of the jury by government counsel, in questioning the witness A. R. Roberson, Jr., that petitioner Roberson had been convicted previously.

REASONS FOR GRANTING WRIT.

The questions presented here are substantial ones, and are of great and widespread importance. A conspiracy case is a difficult one to defend in that all manner of irrelevant and immaterial testimony enters the case if the government avers that the evidence will be later made relevant or material. This occurred in the instant case. The record is replete with evidence of wholly innocuous associations between petitioners. A conspiracy indictment has been termed "a prosecutor's darling" for this very reason.

(1) The District Court and the Court of Appeals for the Sixth Circuit nullified the effect of the decision of this Court in *Jencks* v. *United States*, 353 U. S. 657, 77

S. Ct. 1007, by denying defense counsel's motion to have the statements of government witnesses prior to their testifying, thus giving defense counsel no opportunity to prepare for cross-examination. No recess was taken to permit defense counsel to examine the statements.

(2) The District Court permitted the government counsel to comment in the presence of the jury, and the District Court itself commented that a government witness' statement was being turned over to defense counsel, thus fortifying and lending emphasis to the testimony of the witness then on the witness stand.

(3) Witnesses were permitted to read their typewritten and prepared statements to the jury, thus making it a trial by affidavit and written memoranda, rather than evidence; and in effect, violating petitioners' rights under the Fifth Amendment to the Constitution which provides, in part:

> "• • • nor shall any person • • • be deprived of life, liberty or property, without due process of law, • • •"

and of the Sixth Amendment to the Constitution, which provides, in part:

> "In all criminal prosecutions, the accused, • • • shall • • • be confronted with the witnesses against him."

(4) Petitioners Roberson and Hollins did not testify in the trial. But, while the government was putting on its case the District Court required the defendants to stand up when their names were mentioned by a witness then testifying in order to be identified; and petitioner

Hollins was required to state his name in order to be identified. This violated petitioners' rights under the Fifth Amendment to the Constitution, in that petitioners were required to give testimony against themselves.

(5) Government witnesses were permitted to testify concerning what they saw and smelled in a vehicle belonging to petitioner Roberson while the vehicle was in a garage being serviced. They made this search without a warrant, and without probable cause. This violated petitioner Roberson's rights under the Fourth Amendment to the Constitution, and affected all the petitioners for the reason that any evidence against one petitioner was evidence against all, since it was a conspiracy case.

(6) At the beginning of the trial, the rule was demanded excluding all witnesses who were to testify. The government witness, John L. West, was permitted to remain in the courtroom throughout all the government's testimony and he was then put on the stand as the government's last witness. Objection was made to his testifying, but the District Court allowed him to testify. The District Court has broad discretion in such matters, but in the instant case such tactics of the government deprived these petitioners of a fair and impartial trial and of due process of law. The government put this witness in a position to tie up all loose ends of the government's case, and he did so.

(7) After defendant Smith was arrested, he was questioned by government officers and these officers were permitted to testify, over objection, as to admissions made by Smith. This evidence was never excluded from the

record. None of the testimony was in furtherance of an alleged conspiracy, and certainly occurred after any alleged conspiracy had terminated. It is too fundamental to require citation that this evidence was inadmissible, and was highly prejudicial to all petitioners.

(8) After the arrest of defendant Smith, a book was taken from his person and a portion of the book was introduced in the evidence, which was a notation therein: "Ga Boy 5-3004." Petitioner Roberson was known by a nickname of "Georgia Boy"; but this evidence was inadmissible because it was not in furtherance of an alleged conspiracy and was taken from Smith after any alleged conspiracy had terminated.

(9) Defendant Nichols was arrested by government officers, and the District Court permitted these officers to testify that Nichols stated he had been delivering whiskey from 1022 Pine Sreet, Chattanooga, for about three months for 50¢ a gallon. This evidence was inadmissible insofar as these petitioners were concerned for the reason that the statement was not made in furtherance of any alleged conspiracy and was made after the termination of any alleged conspiracy.

(10) During the cross-examination of defense witness, A. R. Roberson, Jr., government counsel asked the witness questions which were calculated to and did let the jury know that petitioner Roberson had been convicted previously for a violation involving "moonshine" whiskey. Since petitioner Roberson did not take the stand in his own defense, no evidence concerning a previous conviction was admissible, and government counsel knew

this. The motion for mistrial should have been granted. The government's action was highly prejudicial to petitioner Roberson, and since this was a conspiracy case, it was highly prejudicial to the other petitioners.

CONCLUSION.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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